

REMARKS

Claims 2-23 are pending. Claim 19 is rejected under 35 U.S.C. §112. Claims 4, 10, 16 17, 19-20 and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by Reed et al. (U.S. Patent No. 5,312,456). Claims 2, 3, 5-9, 11, 12, 18 and 21-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Reed.

In response to the §112 rejections, Applicant incorporates the Examiner's suggestions and amends claim 19 to eliminate the phrases "shaped and arranged" and "sheet-form."

Regarding the phrase beginning "sized to limit painful contact," Applicant has amended claim 19 to recite, "the skin penetrating elements sized to avoid contact with nerves below the epidermal skin layer." As noted by Applicant, "Since the thickness of the epidermis varies, for example, with age, the location on the skin, and the gender of the patient, the elements 14 can be selected for particular use" (pg. 4, lines 17-20). It is not required that all possible lengths be listed.¹ The appropriate question is whether those skilled in the art would understand what is claimed when the claim is read in light of the specification.² Applicants submit that they would.

In response to the maintained rejections over Reed, Applicant resubmits arguments previously stated and the Declaration filed October 18, 2002 to rebut the Examiner's characterization of Reed.

As discussed with the Examiner via telephone on March 20, 2003, Reed does not show skin penetrating elements, along with the retention barbs formed of a single plastic resin. As noted by the Declaration, Reed's disclosed manufacturing method doesn't produce the skin attachment member as claimed (see para. 7 of the Declaration).

In light of the Declaration, Applicant has amended base claim 19 to clearly recite, "wherein the array of skin penetrating elements, including each retention barb, is formed integrally from a single plastic resin." The term "formed" is simply a statement of a structural limitation, specifically that the skin penetrating elements including the barbs are of a single plastic resin.

Applicant submits herewith U.S. Pat. 6,312,612 to Sherman et al. for consideration by the Examiner. Note that Sherman at least fails to disclose "retention barbs," as claimed.

¹ See Orthokinetics, Inc., v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1576 (Fed. Cir. 1986) [Attached].

² Id.

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In light of the above arguments, Applicant respectfully requests reconsideration and withdrawal of the rejections of claims 2-18 and 20-23.

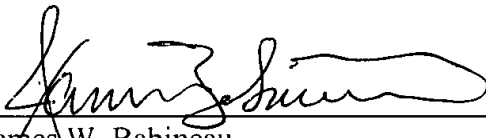
Attached is a marked-up version of the changes being made by the current amendment. The undersigned attorney would appreciate an opportunity to address, via telephone, any remaining issues at the Examiner's convenience.

Applicant asks that all claims be allowed. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date:

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Version with markings to show changes made

In the claims:

Claim 19 has been amended as follows:

19 (Twice Amended). A skin attachment member of plastic resin, comprising:
a [sheet-form] backing, and

an array of skin penetrating elements extending integrally from the backing to a tip, the
skin penetrating elements [being shapes and arranged to penetrate into the epidermal skin layer
and] sized to [limit painful] avoid contact with nerves below the epidermal skin layer,

a plurality of the skin penetrating elements each including a retention barb extending
from an outer surface of the skin penetrating element [and shaped and arranged to cooperate to
resist removal of the skin attachment member from the skin],

wherein the array of skin penetrating elements, including each retention barb, is [molded]
formed integrally from a single plastic resin.